

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 427 & 647

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE  
REGULATION OF PAYDAY LOANS; AMENDING, REPEALING AND ENACTING  
CERTAIN PROVISIONS OF THE NEW MEXICO SMALL LOAN ACT OF 1955.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-15-2 NMSA 1978 (being Laws 1955,  
Chapter 128, Section 2, as amended) is amended to read:

"58-15-2. DEFINITIONS. -- The following words and terms  
when used in the New Mexico Small Loan Act of 1955 [~~shall~~] have  
the following meanings unless the context clearly requires a  
different meaning. The meaning ascribed to the singular form  
[~~shall apply~~] applies also to the plural:

A. "person" [~~shall include~~] includes individuals,  
copartners, associations, trusts, corporations and any other  
legal entity;

1           B. "license" [~~shall mean~~] means a permit issued  
2 under the authority of the New Mexico Small Loan Act of 1955 to  
3 make loans and collect charges therefor strictly in accordance  
4 with the provisions of [~~the New Mexico Small Loan Act of 1955~~]  
5 that act at a single place of business. It shall constitute  
6 and shall be construed as a grant of a [~~revokable~~] revocable  
7 privilege only to be held and enjoyed subject to all the  
8 conditions, restrictions and limitations contained in the New  
9 Mexico Small Loan Act of 1955 and lawful regulations  
10 promulgated by the director [~~of the financial institutions~~  
11 ~~division~~] and not otherwise;

12           C. "licensee" [~~shall mean~~] means a person to whom  
13 one or more licenses have been issued [~~hereunder~~] under the New  
14 Mexico Small Loan Act of 1955 upon [~~their~~] his written  
15 application electing to become a licensee and consenting to  
16 exercise the privilege of a licensee solely in conformity with  
17 the New Mexico Small Loan Act of 1955 and the lawful  
18 regulations promulgated by the director [~~of the financial~~  
19 ~~institutions division hereunder~~] under that act and whose name  
20 [~~or names appear~~] appears on the face of the license;

21           D. "director" means the director of the financial  
22 institutions division of the [~~commerce and industry~~] regulation  
23 and licensing department;

24           E. "department" or "division" means the financial  
25 institutions division of the [~~commerce and industry~~] regulation

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1 and licensing department;

2 F. "payday loan" means a loan in which the business  
3 operator cashes a personal check tendered by the customer and  
4 agrees in writing to defer presentment of that check until the  
5 customer's next payday or another date agreed to by the  
6 business operator and the customer, and includes a "deferred  
7 deposit loan";

8 G. "simple interest" means a method of calculating  
9 interest in which the amount of interest is computed on the  
10 outstanding principal balance of a loan for each given period;  
11 and

12 H. "deferred deposit loan":

13 (1) includes:

14 (a) any advance of money or arrangement  
15 or extension of credit whereby the lender, for a fee, finance  
16 charge or other consideration: 1) accepts a dated instrument  
17 from a consumer or an authorization signed by a consumer to  
18 transfer or withdraw funds from an account for the specific  
19 purpose of repaying a payday or deferred deposit loan; 2)  
20 agrees to hold a dated instrument for a period of time prior to  
21 negotiating or depositing the instrument; or 3) pays to the  
22 consumer, credits to the consumer's account or pays another  
23 person on behalf of the consumer the amount of an instrument  
24 actually paid or to be paid pursuant to the New Mexico Small  
25 Loan Act of 1955; but

. 146908. 1

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1                                   (2) does not include an overdraft product or  
2 service offered by a banking corporation, savings and loan  
3 association or credit union. "

4           Section 2. Section 58-15-3 NMSA 1978 (being Laws 1955,  
5 Chapter 128, Section 3, as amended) is amended to read:

6           "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
7 PENALTY.--

8           A. No person shall engage in the business of  
9 lending in amounts of two thousand five hundred dollars  
10 (\$2,500) or less without first having obtained a license from  
11 the director. Nothing contained in this subsection shall  
12 restrict or prohibit a licensee under the New Mexico Small Loan  
13 Act of 1955 from making loans in any amount under the New  
14 Mexico Bank Installment Loan Act of 1959 in accordance with the  
15 provisions of Section 58-7-2 NMSA 1978 or the general laws of  
16 this state governing money, interest and usury.

17           B. Nothing in the New Mexico Small Loan Act of 1955  
18 shall apply to a person making individual advances of two  
19 thousand five hundred dollars (\$2,500) or less under a written  
20 agreement providing for a total loan or line of credit in  
21 excess of two thousand five hundred dollars (\$2,500) [~~for which~~  
22 ~~real estate is pledged as collateral~~].

23           C. [~~Any~~] A banking corporation, savings and loan  
24 association or credit union operating under the laws of the  
25 United States or of [~~New Mexico~~] a state shall be exempt from

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1 the licensing requirements of the New Mexico Small Loan Act of  
2 1955, nor shall that act apply to [~~any~~] business transacted by  
3 any such person under the authority of and as permitted by any  
4 such law, nor to any bona fide pawnbroking business transacted  
5 under a pawnbroker's license, nor to bona fide commercial loans  
6 made to dealers upon personal property held for resale.

7 Nothing contained in the New Mexico Small Loan Act of 1955  
8 shall be construed as abridging the rights of any of those  
9 exempted from the operations of that act from contracting for  
10 or receiving interest or charges not in violation of [~~any~~] an  
11 existing applicable statute of this state.

12 D. The provisions of Subsection A of this section  
13 apply to [~~any~~] a person owning any interest, legal or  
14 equitable, in the business or profits of any licensee whose  
15 name does not specifically appear on the face of the license,  
16 except a stockholder in a corporate licensee, and to [~~any~~] a  
17 person who seeks to evade its application by any device,  
18 subterfuge or pretense whatsoever, including but not thereby  
19 limiting the generality of the foregoing: the loan,  
20 forbearance, use or sale of credit (as guarantor, surety,  
21 endorser, comaker or otherwise), money, goods or things in  
22 action; the use of collateral or related sales or purchases of  
23 goods or services or agreements to sell or purchase, whether  
24 real or pretended; receiving or charging compensation for goods  
25 or services, whether or not sold, delivered or provided; and

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1 the real or pretended negotiation, arrangement or procurement  
2 of a loan through any use or activity of a third person,  
3 whether real or fictitious.

4 E. Any person, copartnership, trust and the  
5 trustees or beneficiaries thereof, association or corporation  
6 and the several members, officers, directors, agents and  
7 employees thereof who violate or participate in the violation  
8 of [~~any~~] a provision of Subsection A of this section is guilty  
9 of a petty misdemeanor and upon conviction shall be sentenced  
10 pursuant to the provisions of Subsection B of Section 31-19-1  
11 [~~(B)~~] NMSA 1978. [~~Any~~] A contract or loan in the making or  
12 collection of which [~~any~~] an act is done that violates  
13 Subsection A or D of this section is void and the lender has no  
14 right to collect, receive or retain any principal, interest or  
15 charges whatsoever. "

16 Section 3. Section 58-15-5 NMSA 1978 (being Laws 1978,  
17 Chapter 6, Section 1, as amended) is amended to read:

18 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--  
19 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF  
20 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE  
21 FEES--LICENSEE BOUND BY ACT.--

22 A. Upon the filing of an application, whether it is  
23 an original or a renewal, the director shall investigate the  
24 facts concerning the application and the requirements provided  
25 in this section.

1 Any applicant for license, upon written notice to do so by  
2 the director, shall, within twenty days after service of the  
3 notice, furnish in writing, under oath, to the director [~~any~~  
4 ~~and~~] all additional information required by the director that  
5 may be relevant or, in the opinion of the director, helpful to  
6 him in conducting his investigation.

7 Failure to comply with the director's requirement for  
8 supplemental information or the willful furnishing of false  
9 information is sufficient ground for denial of license.

10 False or misleading information willfully and  
11 intentionally furnished to the director prior to the issuance  
12 of any license is ground for suspension or revocation of any  
13 license in accordance with the procedures for suspension or  
14 revocation of license in the New Mexico Small Loan Act of 1955.

15 The director shall grant or deny each application for an  
16 original license within sixty days from the filing of the  
17 application with the required information and fees, unless the  
18 period is extended by written agreement between the applicant  
19 and the director.

20 B. In the event the director finds that:

21 (1) [~~that~~] the financial responsibility,  
22 character and general fitness of the applicant for an original  
23 license and of the individual members and beneficiaries  
24 thereof, if the applicant is a copartnership, association or  
25 trust, and of the officers and directors thereof, if the

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1 applicant is a corporation, are such as to command the  
2 confidence of the public and to warrant belief that the  
3 business will be operated lawfully, honestly, fairly and  
4 efficiently within the declared purposes and spirit of the New  
5 Mexico Small Loan Act of 1955;

6 (2) [~~that~~] allowing the applicant to engage in  
7 business will promote the convenience and advantage of the  
8 community in which the business of the applicant is to be  
9 conducted; and

10 (3) [~~that~~] the applicant has available for  
11 operation of the business at the specified location cash or its  
12 equivalent, convertible securities or receivables of thirty  
13 thousand dollars (\$30,000) or any combination thereof;  
14 he shall enter an order granting the application, file his  
15 findings and, upon payment of the license fee of [~~five hundred~~  
16 ~~dollars~~ ~~(\$500)~~] seven hundred fifty dollars (\$750), issue and  
17 deliver a license to the applicant.

18 C. If the director does not make the findings  
19 enumerated in Subsection B of this section, he shall enter an  
20 order denying the application, notify the applicant of the  
21 denial and retain the application fee. Within thirty days  
22 after the entry of such an order, he shall prepare written  
23 findings and shall deliver a copy to the applicant.

24 D. Written application for renewal licenses shall  
25 be filed on or before March 31 of each year, and thereupon the

1 director shall investigate the facts and review his files of  
2 examinations of the applicant made by his office and of  
3 complaints filed by borrowers, if any. If he finds that:

4 (1) [~~that~~] no valid complaints of violations  
5 or abuses of the New Mexico Small Loan Act of 1955 or of the  
6 regulations of the director promulgated under that act have  
7 been filed by borrowers;

8 (2) [~~that~~] his examinations of the affairs of  
9 the applicant indicate that the business has been conducted and  
10 operated lawfully and efficiently within the declared purposes  
11 and spirit of the New Mexico Small Loan Act of 1955; and

12 (3) [~~that~~] the financial responsibility,  
13 experience and general fitness and character of the applicant  
14 remain such as to command the confidence of the public and to  
15 warrant the belief that the business will continue to be  
16 operated lawfully and efficiently within the purposes and  
17 spirit of the New Mexico Small Loan Act of 1955;  
18 he shall deliver a renewal license to the applicant.

19 E. If the director does not make the findings  
20 enumerated in Subsection D of this section, he may grant a  
21 temporary extension of the license not exceeding sixty days  
22 pending a hearing; shall enter an order fixing a date for  
23 hearing upon the application; shall notify the licensee  
24 thereof, specifying the particular complaints, violations or  
25 abuses or other reasons for his contemplated refusal to renew

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1 the license; and shall afford to the applicant an opportunity  
2 to be heard. At the hearing, the director shall produce his  
3 evidence to establish the truth of the charges of violation or  
4 other grounds specified in the notice, and the applicant shall  
5 be accorded the right to produce evidence or other matters of  
6 defense. If after the hearing the director finds that the  
7 complaints of violations or other grounds specified in the  
8 notice are not well founded, he shall issue the renewal  
9 license. If he finds that the complaints of violations or  
10 other grounds are well founded, he shall enter an order denying  
11 the renewal application and notify the applicant of the denial,  
12 returning the renewal license fee tendered with the  
13 application. Within thirty days after the entry of such an  
14 order, ~~he~~ the director shall prepare written findings and  
15 shall deliver a copy of the findings to the applicant. The  
16 order shall be subject to review as provided in Section  
17 58-15-25 NMSA 1978. The court in its discretion and upon  
18 proper showing may order a temporary extension of the license  
19 pending disposition of the review proceedings.

20 F. In connection with the determination of fitness  
21 and character of an applicant ~~under~~ pursuant to provisions of  
22 this section, the fact that the applicant or licensee is a  
23 member of or interested financially in, connected or affiliated  
24 with, controls or is controlled by or owns or is owned by other  
25 corporations, partnerships, trusts, associations or other legal

1 entities engaged in the lending of money whose policies and  
2 practices as to rates of interest, charges and fees and general  
3 dealing with borrowers are questionable or would constitute  
4 violation of the general usury statutes of this state or of the  
5 declared purposes and spirit of the New Mexico Small Loan Act  
6 of 1955 shall be given such consideration and weight as the  
7 director determines.

8 G. At the time of issuance of original license and  
9 each annual renewal thereof, the licensee for each licensed  
10 office shall pay to the director as a license fee for the  
11 period covered by the license the sum of [~~five hundred dollars~~  
12 ~~(\$500)~~] seven hundred fifty dollars (\$750) as a minimum, plus  
13 an additional seventy-five cents (\$.75) for each one thousand  
14 dollars (\$1,000) or fraction thereof of loans outstanding as of  
15 December 31 next preceding, as shown on the applicant's annual  
16 report. In the event that the application for annual renewal  
17 of the license is delinquent, the licensee shall also pay a  
18 delinquency fee of ten dollars (\$10.00) per day for each day  
19 the licensee is delinquent in filing the application for  
20 renewal.

21 H. Each licensee by accepting any license that is  
22 issued or renewed or by continuing to operate any licensed  
23 office under the New Mexico Small Loan Act of 1955 shall by  
24 such action be deemed to have consented to be bound by the  
25 lawful provisions of that act and all lawful requirements,

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1 regulations and orders of the director promulgated or issued  
2 pursuant to any authorization granted in that act. "

3 Section 4. Section 58-15-9 NMSA 1978 (being Laws 1955,  
4 Chapter 128, Section 9, as amended) is amended to read:

5 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--  
6 WITNESSES. --

7 A. At least once each year, the director or his  
8 duly authorized representative shall make an examination of the  
9 place of business of each licensee and such of the loans,  
10 transactions, books, papers and records of the licensee insofar  
11 as they pertain to the business licensed under the New Mexico  
12 Small Loan Act of 1955 as [~~he~~] the director may deem necessary.  
13 The licensee shall pay to the [~~commissioner~~] director for such  
14 annual examination a fee of [~~two hundred dollars (\$200)~~] four  
15 hundred dollars (\$400).

16 Within a reasonable time after the completion of an  
17 examination of a licensed office, the director shall mail to  
18 the licensee a copy of the report of the examination, together  
19 with any comments, exceptions, objections or criticisms of the  
20 director concerning the conduct of the licensee and the  
21 operation of the licensed office.

22 B. For the purpose of discovering violations of the  
23 New Mexico Small Loan Act of 1955 or of securing information  
24 lawfully required under that act, the director or his duly  
25 authorized representative may at any time investigate the

1 business and examine the books, accounts, papers and records  
2 used therein, including income tax returns or other reports  
3 filed in the office of the director of the revenue processing  
4 division of the taxation and revenue department of:

5 (1) any licensee;

6 (2) any other person engaged in the business  
7 described in Subsection A of Section 58-15-3 NMSA 1978 or  
8 participating in such business as principal, agent, broker or  
9 otherwise; and

10 (3) any person whom the director has  
11 reasonable cause to believe is violating any provision of [~~that~~  
12 ~~act~~] the New Mexico Small Loan Act of 1955, whether the person  
13 claims to be within the authority or beyond the scope of that  
14 act.

15 For the purposes of this section, any person who  
16 advertises, solicits or holds himself out as willing to make  
17 loan transactions in any amount, except persons, financial  
18 institutions or lending agencies operating under charters or  
19 licenses issued by any state or federal agency or under any  
20 special statute, shall be subject to investigation under the  
21 New Mexico Small Loan Act of 1955 and shall be presumed to be  
22 engaged in the business described in Subsection A of Section  
23 58-15-3 NMSA 1978 as to any loans of two thousand five hundred  
24 dollars (\$2,500) or less.

25 C. To facilitate the examinations and

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1 investigations by the director and fully disclose the  
2 operations and methods of operation of each licensed office,  
3 the licensee shall, in each licensed office, keep on file as  
4 part of the records of the office all office manuals,  
5 communications or directives containing statements of loan  
6 policy to office managers and employees.

7 If the licensee is an individual, corporation, trust or  
8 association, the licensee shall keep in at least one office for  
9 information of the director a record of the several  
10 individuals, firms, beneficiaries of any trust and corporations  
11 deriving or receiving any part of the benefits, net income or  
12 profits from the operation of the licensee within New Mexico.

13 D. For the purposes of this section, the director  
14 or his duly authorized representative shall have and be given  
15 free access to the offices and places of business, files, safes  
16 and vaults of all licensees and shall have authority to require  
17 the attendance of any person and to examine him under oath  
18 relative to such loans or business or to the subject matter of  
19 any examination, investigation or hearing as provided in the  
20 New Mexico Small Loan Act of 1955. Notices to appear before  
21 the director for examination under oath may be served by  
22 registered mail. If the party notified to appear is the  
23 licensee, any person named on the face of the license being  
24 investigated or any agent, employee or manager participating in  
25 the business and he fails to appear for examination or refuses

1 to answer questions submitted, the director may, forthwith and  
 2 without further notice to the licensee, suspend the license  
 3 involved pending compliance with the notice. Upon failure of  
 4 any other person to appear or to answer questions, the director  
 5 may apply to and invoke the aid of any district court of New  
 6 Mexico in compelling the attendance and testimony of any such  
 7 person and the production of books, records, written  
 8 instruments and documents relating to the business of the  
 9 licensee. Any district court whose aid is so invoked by the  
 10 director may, in case of contumacy or refusal to obey any order  
 11 of the district court issued to compel the attendance of the  
 12 person or the production of books, records, written instruments  
 13 and documents, punish the person as for contempt of court.

14 E. The director shall prescribe rules of procedure  
 15 for all hearings, examinations or investigations provided for  
 16 in the New Mexico Small Loan Act of 1955. The director is not  
 17 bound by the usual common law or statutory rules of evidence or  
 18 by any technical or formal rules of procedure or pleading and  
 19 specification of charges other than as specifically provided in  
 20 the New Mexico Small Loan Act of 1955 but may conduct hearings,  
 21 examinations and investigations in the manner best calculated  
 22 to ascertain the substantial rights of the parties interested.

23 F. The director has the power to administer oaths,  
 24 certify official acts and records of his office, issue  
 25 subpoenas for witnesses in the name of and under the seal of

1 his office and compel the production of papers, books, accounts  
2 and documents. He shall issue subpoenas at the instance of any  
3 party to a hearing before the [~~division~~] department upon  
4 payment of a fee of two dollars and fifty cents (\$2.50) for  
5 each subpoena so issued.

6 G. Depositions may be taken with or without a  
7 commission, and written interrogatories may be submitted in the  
8 same manner and on the same grounds provided by law for the  
9 taking of depositions or submission of written interrogatories  
10 in civil actions pending in the district courts of this state.

11 H. Each witness who appears before the director by  
12 his order shall receive the fees and mileage provided for  
13 witnesses in civil actions in the district court. Fees and  
14 mileage shall be paid by the state, but no witness subpoenaed  
15 at the instance of parties other than the director is entitled  
16 to compensation from the state for attendance or mileage unless  
17 the director certifies that his testimony is material.

18 I. Whenever the director has reasonable cause to  
19 believe that any person is violating any provision of the New  
20 Mexico Small Loan Act of 1955, he may, in addition to all  
21 actions provided for in that act and without prejudice thereto,  
22 enter an order requiring the person to desist or to refrain  
23 from the violation. An action may be brought on the relation  
24 of the attorney general and the director to enjoin the person  
25 from engaging in or continuing the violation or from doing any

1 act in furtherance of the violation. In any such action, an  
 2 order or judgment may be entered awarding a preliminary or  
 3 final injunction as may be deemed proper. In addition to all  
 4 other means provided by law for the enforcement of a temporary  
 5 restraining order, temporary injunction or final injunction,  
 6 the court in which such action is brought shall have power and  
 7 jurisdiction to impound and to appoint a receiver for the  
 8 property and business of the defendants, including books,  
 9 papers, documents and records pertaining thereto or so much  
 10 thereof as the court may deem reasonably necessary to prevent  
 11 further violations of the New Mexico Small Loan Act of 1955  
 12 through or by means of the use of the property and business.  
 13 The receiver, when appointed and qualified, shall have powers  
 14 and duties as to custody, collection, administration, winding  
 15 up and liquidation of the property and business as are from  
 16 time to time conferred upon him by the court."

17 Section 5. Section 58-15-10 NMSA 1978 (being Laws 1955,  
 18 Chapter 128, Section 10, as amended) is amended to read:

19 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL  
 20 INFORMATION.--

21 A. Each licensee shall keep and use in his business  
 22 such books, accounts and records in accordance with sound  
 23 accounting practices [~~as in the director's opinion~~] that will  
 24 enable [~~him~~] the director to determine whether the licensee is  
 25 complying with the provisions of the New Mexico Small Loan Act

. 146908. 1

1 of 1955 and with the orders and regulations lawfully made by  
2 the director [~~under~~] pursuant to provisions of that act. Each  
3 licensee shall preserve the books, accounts and records for at  
4 least two years after making the final entry on [~~any~~] a loan  
5 recorded therein.

6 B. Each licensee shall, annually on or before March  
7 31, file a report with the director giving such relevant  
8 information as he may reasonably require concerning the  
9 business and operations during the preceding calendar year for  
10 each licensed place of business conducted by the licensee  
11 within the state pursuant to the provisions of the New Mexico  
12 Small Loan Act of 1955. The report shall be made under oath  
13 and shall be in the form prescribed by the director. A summary  
14 of the reports shall be included in the published annual report  
15 of the director.

16 C. At the time of filing each annual report, at the  
17 time of the annual examination or at any other time when [~~any~~]  
18 a license is in effect, the director may, upon written notice,  
19 require [~~any~~] a licensee to furnish within twenty days in  
20 writing, and under oath if so specified by any written notice  
21 issued and served by the director upon the licensee, [~~any and~~  
22 ~~all~~] additional information as to ownership of any office;  
23 operation of any office; books, records, files and papers; and  
24 affiliation or relationship with any other person, firm, trust,  
25 association or corporation as, in the opinion of the director,

1 may be helpful to ~~[him]~~ the director in the discharge of his  
2 official duties.

3 D. False or misleading information willfully  
4 furnished to the director by ~~[any]~~ a licensee in ~~[any]~~ an  
5 annual report or pursuant to ~~[any]~~ a notice or requirement of  
6 the director is sufficient ground for suspension and revocation  
7 of license in accordance with the procedures for suspension or  
8 revocation of license set forth in the New Mexico Small Loan  
9 Act of 1955. "

10 Section 6. Section 58-15-12 NMSA 1978 (being Laws 1955,  
11 Chapter 128, Section 12, as amended) is amended to read:

12 "58-15-12. ADVERTISING [~~SCHEDULE OF CHARGES~~]. -- [~~A. No~~] A  
13 licensee or other person subject to the New Mexico Small Loan  
14 Act of 1955 shall not advertise, display, distribute or  
15 broadcast or cause or permit to be advertised, displayed,  
16 distributed or broadcast in any manner whatsoever ~~[any]~~ a  
17 false, misleading or deceptive statement or representation with  
18 regard to the charges, terms or conditions for loans in the  
19 amount or of the value of two thousand five hundred dollars  
20 (\$2,500) or less. The director may require that charges or  
21 rates of charge, if stated by a licensee, be stated fully and  
22 clearly in such manner as he may deem necessary to prevent  
23 misunderstanding [~~thereof~~] by prospective borrowers. The  
24 director may permit or require licensees to refer in their  
25 advertising to the fact that their business is under state

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1 supervision, subject to conditions imposed by him to prevent  
2 [any] erroneous impressions as to the scope or degree of  
3 protection provided by the New Mexico Small Loan Act of 1955.

4 ~~[B. Each licensee shall display in each licensed~~  
5 ~~place of business, in a place where it will be readily visible~~  
6 ~~by borrowers, a full and accurate schedule of the rates of~~  
7 ~~charges upon all classes of loans currently to be made by him,~~  
8 ~~stated on a percent per annum basis and also on a percent per~~  
9 ~~month basis.]"~~

10 Section 7. Section 58-15-14.1 NMSA 1978 (being Laws 1983,  
11 Chapter 95, Section 2) is amended to read:

12 "58-15-14.1. CHARGES--METHOD OF COMPUTATION. -- [Charges  
13 ~~on]~~ The simple interest method shall be used for loans made  
14 under the New Mexico Small Loan Act of 1955. Charges shall not  
15 be paid, deducted or received in advance. Such charges shall  
16 not be compounded. However, if part or all of the  
17 consideration for a loan contract is the unpaid principal  
18 balance of a prior loan, then the principal amount payable  
19 under the loan contract may include any unpaid charges [which]  
20 that have accrued within sixty days on the prior loan. Such  
21 charges shall be computed on the basis of the number of days  
22 actually elapsed. [For the purpose of computing charges,  
23 whether at the maximum rate or less, a month shall be any  
24 period of thirty consecutive days and the rate of charge for  
25 each day shall be one-thirtieth of the monthly rate.]"

1 Section 8. Section 58-15-17 NMSA 1978 (being Laws 1955,  
2 Chapter 128, Section 15, as amended) is amended to read:

3 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--  
4 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT  
5 AND INTEREST.--

6 A. Every licensee shall:

7 (1) at the time [~~any~~] a loan is made within  
8 the provisions of the New Mexico Small Loan Act of 1955,  
9 deliver to the borrower or, if there are two or more borrowers  
10 on the same obligation, to one of them, a statement in English  
11 on which shall be printed a copy of Section 58-15-14.1 NMSA  
12 1978, disclosing in clear and distinct terms the amount of the  
13 loan, the date the loan was made, a schedule or a description  
14 of the payments, the type of the security, if any, for the  
15 loan, the name and address of the licensed office, the name of  
16 the person primarily obligated for the loan, the amount of  
17 principal, the agreed rate of charge stated on [~~a percent per~~  
18 ~~month and~~] a percent per year basis and the amount in dollars  
19 and cents and other items allowable pursuant to that act, so  
20 stated as to clearly show the allocation of each item included;

21 (2) for each payment made on account of any  
22 such loan, give to the person making it a plain and complete  
23 receipt specifying the date and amount of the payment, the  
24 amount applied to interest and principal and the balance  
25 unpaid. When payment is made in any other manner than by the

. 146908. 1

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1 borrower in person, by an agent of the borrower or by check or  
2 money order, the licensee shall mail the receipt to the  
3 borrower's last known address or hold the receipt for delivery  
4 upon request of the borrower. A copy of all receipts shall be  
5 kept on file in the office of the licensee as a part of his  
6 records; and

7 (3) upon payment of the loan in full, mark  
8 plainly every note and promise to pay signed by any obligor  
9 with the word "paid" or "canceled" and promptly file or record  
10 a release of any mortgage if the mortgage has been recorded,  
11 restore any pledge and cancel and return any note and any  
12 assignment given to the licensee. A licensee may mark and  
13 return a copy of the note, promise to pay or any assignment if  
14 the copy accurately reproduces the complete original.

15 B. No licensee shall take [~~any~~] a note or promise  
16 to pay that does not disclose the amount of the loan, a  
17 schedule of payments, or a description thereof, and the agreed  
18 charge or rate of charge or any instrument in which blanks are  
19 left to be filled in after execution.

20 C. If judgment is obtained against [~~any~~] a party or  
21 [~~any~~] a loan made [~~under~~] pursuant to the provisions of the New  
22 Mexico Small Loan Act of 1955, neither the judgment nor the  
23 loan shall carry, from the date of the judgment, [~~any~~] charges  
24 against [~~any~~] a party to the loan other than court costs,  
25 [~~attorneys'~~] attorney fees and interest on the amount of the

1 judgment at ten percent a year.

2 D. ~~[Any]~~ A loan made ~~[under]~~ pursuant to the  
3 provisions of the New Mexico Small Loan Act of 1955 that is  
4 filed and approved as a claim in any bankruptcy proceeding  
5 shall, from a date ninety days subsequent to the date of  
6 adjudication, bear interest at the rate of ten percent a year  
7 only. This limitation shall not apply when the bankrupt is not  
8 discharged in bankruptcy or to any obligation not dischargeable  
9 under the provisions of the federal Bankruptcy Act [~~presently~~  
10 ~~in force or as hereafter amended~~].

11 E. No loan made under the provisions of the New  
12 Mexico Small Loan Act of 1955 shall bear interest after ninety  
13 days from the date of the death of the borrower in excess of a  
14 rate of ten percent a year on the unpaid principal balance of  
15 the loan.

16 F. No loan made under the provisions of the New  
17 Mexico Small Loan Act of 1955 shall bear interest after twelve  
18 months from the date of maturity of the loan in excess of ten  
19 percent a year upon the unpaid principal balance of the loan."

20 Section 9. Section 58-15-20 NMSA 1978 (being Laws 1955,  
21 Chapter 128, Section 18) is amended to read:

22 "58-15-20. FEES AND COSTS. --

23 [~~(a) FILING OR RECORDING FEES~~] A. Notwithstanding  
24 any provision of [~~this Act~~] the New Mexico Small Loan Act of  
25 1955, lawful fees, if any, actually and necessarily paid out by

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1 the licensee to ~~[any]~~ a public officer for the filing,  
2 recording or releasing in ~~[any]~~ a public office ~~[any]~~ of an  
3 instrument securing the loan may be charged to the borrower.

4 ~~[(b)—ATTORNEY FEES]~~ B. Notwithstanding any  
5 provision in ~~[any]~~ a note or other loan contract taken or  
6 received under ~~[this Act]~~ the New Mexico Small Loan Act of  
7 1955, attorney fees shall not be charged or collected except  
8 ~~[where such]~~ when the note or other contract has been ~~[turned]~~  
9 submitted in good faith to an attorney for collection and after  
10 diligent effort to collect ~~[has failed]~~ on the part of the  
11 licensee has failed.

12 ~~[(c)—COURTS COSTS Where]~~ C. When suit is filed in  
13 ~~[any]~~ a court of competent jurisdiction, court costs shall be  
14 ~~[collectable]~~ collectible in accordance with the laws of New  
15 Mexico applicable thereto.

16 ~~[(d)—NOTARY FEES PROHIBITED]~~ D. Notary fees  
17 incident to the taking of ~~[any]~~ a lien to secure a small loan  
18 or releasing such a lien shall not be charged or collected by  
19 ~~[any]~~ a licensee ~~[nor by any]~~, an officer, agent or employee of  
20 a licensee ~~[nor by]~~ or anyone within ~~[any]~~ an office, room or  
21 place of business in which a small loan office is conducted.

22 E. Delinquency fees shall not exceed five cents  
23  (\$.05) for each one dollar (\$1.00) of each installment more  
24 than ten days in arrears, provided that the total of  
25 delinquency charges on any such installment shall not exceed

1 ten dollars (\$10.00) and that only one delinquency charge shall  
2 be made on any one installment regardless of the period during  
3 which the installment remains unpaid."

4 Section 10. Section 58-15-23 NMSA 1978 (being Laws 1955,  
5 Chapter 128, Section 21) is amended to read:

6 "58-15-23. VIOLATION OF GENERAL USURY LAWS. -- The [~~willful~~]  
7 willful violation by [~~any~~] a licensee or by [~~any~~] an officer,  
8 manager, director, trustee, executive or employee directly  
9 engaged in operating a small loan office under the provisions  
10 of [~~this Act~~] the New Mexico Small Loan Act of 1955 of any  
11 usury statute of this state within [~~any~~] an office, room or  
12 place of business in which the making of loans as a licensee is  
13 solicited or engaged in or in association or conjunction  
14 therewith [~~shall be~~] is ground for suspension and revocation of  
15 license in accordance with the applicable procedures  
16 [~~applicable thereto as~~] set forth [~~herein~~] in that act."

17 Section 11. A new section of the New Mexico Small Loan  
18 Act of 1955, Section 58-15-32 NMSA 1978, is enacted to read:

19 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY  
20 LOANS. --

21 A. No payday loan shall exceed one thousand dollars  
22 (\$1,000).

23 B. A payday loan agreement shall include a  
24 provision granting the consumer the right to rescind the  
25 transaction by returning in cash, or through certified funds,

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1 one hundred percent of the amount advanced by a licensee for a  
2 payday loan no later than 5:00 p.m. on the first day of  
3 business conducted by the licensee following the execution of  
4 the payday loan agreement. Unless the provisions of this  
5 subsection are followed, a payday loan shall not be subject to  
6 the consumer's right of rescission unless both the consumer and  
7 the licensee agree to the rescission. If a consumer exercises  
8 the right of rescission pursuant to this subsection, no fee for  
9 the rescinded transaction shall be charged to the consumer, and  
10 the licensee shall not charge or impose on the consumer a fee  
11 for exercising the right of rescission pursuant to this  
12 subsection.

13 C. A consumer shall be permitted to make partial  
14 payments in any amount on a payday loan at any time.

15 D. After each payment is made, in full or in part,  
16 on a payday loan, the licensee shall give to the person making  
17 the payment a signed, dated receipt showing the amount paid,  
18 amount credited toward interest and principal and the balance  
19 due on the loan.

20 E. A check written by a consumer for a payday loan  
21 shall be payable to the order of the licensee.

22 F. The licensee shall provide the consumer, or each  
23 consumer if there is more than one, with copies of the payday  
24 loan agreement in Spanish or English prior to the consummation  
25 of the loan.

1 G. The holder or assignee of a check written by a  
2 consumer in connection with a payday loan takes the instrument  
3 subject to all claims and defenses of the consumer. A payday  
4 loan agreement may not be renewed, refinanced or extended  
5 without the mutual written consent of the licensee and the  
6 consumer.

7 H. Small loan companies making payday loans shall  
8 have available a consumer information brochure in English and  
9 Spanish as determined by the director. "

10 Section 12. A new section of the New Mexico Small Loan  
11 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

12 "58-15-33. [NEW MATERIAL] PAYDAY LOANS-- PERMITTED  
13 CHARGES. --

14 A. A licensee may not charge or receive from a  
15 consumer, directly or indirectly, interest, fees or charges  
16 except as provided in this section.

17 B. A licensee may charge an administrative fee of  
18 not more than five dollars (\$5.00) for each new payday loan  
19 entered into with a consumer.

20 C. In addition to the administrative fee, the  
21 licensee shall only charge simple interest on the amount of  
22 loan proceeds delivered to the consumer in a payday loan. The  
23 aggregate amount of interest received by the licensee for a  
24 payday loan includes all interest received on the loan,  
25 including interest received after any renewals, refinance or

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1 extensions. The total aggregate amount may not exceed two  
2 times the amount of the original loan agreement principal  
3 balance. Once the licensee has received in total aggregate  
4 interest equal to two times the original loan agreement  
5 principal balance, the payday loan shall be terminated and  
6 considered paid in full by the consumer. The interest rate  
7 charged on the outstanding balance after initial maturity shall  
8 not be greater than the interest rate charged during the  
9 initial loan term. Interest on loans shall be computed and  
10 paid only as a percentage of the unpaid principal balance.

11 D. If there are insufficient funds to pay a check  
12 on the date of presentment, a licensee may charge a fee not to  
13 exceed fifteen dollars (\$15.00). Only one fee may be collected  
14 on a check even if it has been redeposited and returned more  
15 than once. A fee charged pursuant to this subsection is a  
16 licensee's only charge for a late payment. "

17 Section 13. A new section of the New Mexico Small Loan  
18 Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

19 "58-15-34. [NEW MATERIAL] PAYDAY LOANS--PROHIBITED  
20 ACTS.--A licensee shall not:

21 A. use or threaten to use a criminal process in  
22 this or another state to collect on a payday loan;

23 B. alter the date or other information on a check  
24 drawn by a consumer in a payday loan transaction;

25 C. use a device or agreement that would have the

1 effect of charging or collecting more fees, charges or interest  
2 than allowed by law by entering into a different type of  
3 transaction with the consumer that has that effect except as  
4 specifically permitted by the New Mexico Small Loan Act of  
5 1955;

6 D. engage in unfair, deceptive or fraudulent  
7 practices in the making or collecting of a payday loan;

8 E. charge a fee to cash a check representing the  
9 proceeds of the payday loan;

10 F. use or attempt to use the check written by the  
11 consumer for a payday loan as security for purposes of a state  
12 or federal law;

13 G. make more than one payday loan to a consumer at  
14 a time;

15 H. accept collateral for a payday loan other than  
16 the consumer's check;

17 I. charge interest, fees or charges other than  
18 those specifically authorized, including:

19 (1) charges for insurance; or

20 (2) collection costs;

21 J. threaten to take any action against a consumer  
22 that is prohibited by the New Mexico Small Loan Act of 1955;

23 K. include any of the following provisions in a  
24 payday loan agreement:

25 (1) a hold harmless clause;

. 146908. 1

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1 (2) a confession of judgment clause or power  
2 of attorney;

3 (3) an assignment of or order for payment of  
4 wages or other compensation for services;

5 (4) a provision in which the consumer agrees  
6 not to assert a claim or defense arising out of the contract;  
7 or

8 (5) a waiver of a provision of the New Mexico  
9 Small Loan Act of 1955;

10 L. make a payday loan contingent on the purchase of  
11 insurance or other goods or services;

12 M. advertise, display, distribute or broadcast or  
13 cause or permit to be advertised, displayed, distributed or  
14 broadcast, in any manner, a false, misleading or deceptive  
15 statement or representation with regard to the charges, terms  
16 or conditions for payday loans;

17 N. take a check, instrument or form in which blanks  
18 are left to be filled in after execution of the check,  
19 instrument or form;

20 O. offer, arrange, act as an agent for or assist a  
21 third party in any way in the making of a payday loan unless  
22 the third party complies with all applicable federal and state  
23 laws and regulations;

24 R. enter into a payday loan with a consumer who  
25 lacks the capacity to consent; or

1 Q. use provisions in documents associated with a  
2 payday loan that are deceptive or misleading. "

3 Section 14. A new section of the New Mexico Small Loan  
4 Act of 1955, Section 58-15-35 NMSA 1978, is enacted to read:

5 "58-15-35. [NEW MATERIAL] SMALL LOAN COMPANIES MAKING  
6 PAYDAY LOANS. --Effective January 1, 2005, a licensee that  
7 issues payday loans shall file an annual report with the  
8 division for data collection purposes on or before the last day  
9 of March for the preceding calendar year on forms prescribed by  
10 the division. The report shall disclose in detail and under  
11 appropriate headings:

12 A. the location of the licensee;

13 B. the total dollar amount of assets of the  
14 licensee;

15 C. the total volume of the licensee's payday loans  
16 in dollars funded or originated during the year;

17 D. the total number of the licensee's payday loans  
18 funded or originated during the year;

19 E. the total number of the licensee's payday loans  
20 outstanding at the end of the year;

21 F. the minimum, maximum and average dollar amount  
22 of the licensee's payday loans funded or originated during the  
23 year;

24 G. the average annual percentage rate charged to  
25 the consumer for all payday loans funded or originated during

. 146908. 1

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1 the year;

2 H. the average number of payday loans made to each  
3 consumer funded or originated during the year;

4 I. the average number of rollovers, refinances or  
5 extensions by each consumer;

6 J. the total average interest cost of rollover,  
7 refinances or extensions to each consumer;

8 K. the total number of loans defaulted during the  
9 year;

10 L. the total dollar amount of loans defaulted  
11 during the year;

12 M. the average of each consumer's income documented  
13 for each new payday loan during the year;

14 N. documentation required by the licensee prior to  
15 issuing a payday loan;

16 O. summary of standard actions taken by the  
17 licensee upon default;

18 P. copies of loan documents and fee schedules;

19 Q. the number and type of complaints filed against  
20 the licensee; and

21 R. any additional information that the director  
22 requests to determine if the licensee is complying with the  
23 provisions of the New Mexico Small Loan Act of 1955. "

24 Section 15. REPEAL. -- Sections 58-15-15 and 58-15-19 NMSA  
25 1978 (being Laws 1959, Chapter 201, Section 1 and Laws 1955,

. 146908. 1

1 Chapter 128, Section 17, as amended) are repealed.

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